

AMENDED IN SENATE JANUARY 26, 2010

AMENDED IN SENATE JANUARY 13, 2010

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 408

Introduced by Senator Padilla

(Principal coauthor: Assembly Member V. Manuel Perez)

**(Coauthors: Senators Correa, *Cox*, *Harman*, *Huff*, *Leno*, and
Runner)**

(Coauthors: Assembly Members Cook, Hagman, Huffman, Lieu, Ma,
and Nava)

February 26, 2009

An act to amend Section 12370 of the Penal Code, relating to body armor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 408, as amended, Padilla. Body armor.

Existing law provides that any person who has been convicted of a violent felony who purchases, owns, or possesses body armor, as defined in the California Code of Regulations, except as authorized, is guilty of a felony, punishable by imprisonment in a state prison for 16 months or 2 or 3 years. However, the court, in *People v. Saleem* (Cal.App. 2nd Dist., Dec. 17, 2009, B204646), held that this provision is unconstitutionally vague in violation of due process.

This bill would change the definition of "body armor" for purposes of this provision to mean any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor. By expanding the scope of an existing crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12370 of the Penal Code is amended to
2 read:

3 12370. (a) ~~Any~~ A person who has been convicted of a violent
4 felony, as defined in subdivision (c) of Section 667.5, under the
5 laws of the United States, the State of California, or any other state,
6 government, or country, who purchases, owns, or possesses body
7 armor, as defined in subdivision (f), except as authorized under
8 subdivision (b), is guilty of a felony, punishable by imprisonment
9 in a state prison for 16 months, or two or three years.

10 (b) ~~Any~~ A person whose employment, livelihood, or safety is
11 dependent on the ability to legally possess and use body armor,
12 who is subject to the prohibition imposed by subdivision (a) due
13 to a prior violent felony conviction, may file a petition with the
14 chief of police or county sheriff of the jurisdiction in which he or
15 she seeks to possess and use the body armor for an exception to
16 this prohibition. The chief of police or sheriff may reduce or
17 eliminate the prohibition, impose conditions on reduction or
18 elimination of the prohibition, or otherwise grant relief from the
19 prohibition as he or she deems appropriate, based on the following:

20 (1) A finding that the petitioner is likely to use body armor in
21 a safe and lawful manner.

22 (2) A finding that the petitioner has a reasonable need for this
23 type of protection under the circumstances.

24 In making its decision, the chief of police or sheriff shall consider
25 the petitioner's continued employment, the interests of justice, any
26 relevant evidence, and the totality of the circumstances. It is the
27 intent of the Legislature that law enforcement officials exercise
28 broad discretion in fashioning appropriate relief under this

1 paragraph in cases in which relief is warranted. However, this
2 paragraph may not be construed to require law enforcement
3 officials to grant relief to any particular petitioner. Relief from this
4 prohibition does not relieve any other person or entity from any
5 liability that might otherwise be imposed.

6 (c) The chief of police or sheriff shall require, as a condition of
7 granting an exception under subdivision (b), that the petitioner
8 agree to maintain on his or her person a certified copy of the law
9 enforcement official's permission to possess and use body armor,
10 including any conditions or limitations.

11 (d) Law enforcement officials who enforce the prohibition
12 specified in subdivision (a) against a person who has been granted
13 relief pursuant to subdivision (b), shall be immune from any
14 liability for false arrest arising from the enforcement of this
15 subdivision unless the person has in his or her possession a certified
16 copy of the permission granting the person relief from the
17 prohibition, as required by subdivision (c). This immunity from
18 liability does not relieve any person or entity from any other
19 liability that might otherwise be imposed.

20 (e) For purposes of this section only, "violent felony" refers to
21 the specific crimes listed in subdivision (c) of Section 667.5, and
22 to crimes defined under the applicable laws of the United States
23 or any other state, government, or country that are reasonably
24 equivalent to the crimes listed in subdivision (c) of Section 667.5.

25 (f) For purposes of this section, "body armor" means any
26 bullet-resistant material intended to provide ballistic and trauma
27 protection for the person wearing the body armor.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 SEC. 3. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

- 1 In order to protect the public and law enforcement in California
- 2 from current and ongoing crimes involving the possession and use
- 3 of body armor by persons previously convicted of violent felonies,
- 4 it is necessary that this legislation take effect immediately.

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